Supreme Court, U.S.
FILED

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In The
SUPREME COURT OF THE UNITED STATES

VANDER MOORE GORE, JR.,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

ISSUES PRESENTED FOR REVIEW

I. Does prosecution evidence of downward departures granted in the case to multiple government witnesses violate the F.R.E. 608 prohibition against bolstering credibility and if so, does it constitute plain error?

Sub issue: Did the District Court commit plain error when it allowed the Government's prosecuting attorney to initiate testimony about downward departures already granted to witnesses Keel, Cooper, Jennings, and Davis, all of whom who testified against Vander More Gore, Jr., when such testimony constituted extrinsic evidence which improperly bolstered the witnesses' credibility in violation of F.R.E 608.

II. Did the District Court commit plain error when it allowed the Government to elicit testimony from witnesses Avant and Paul Bellamy concerning Bellamy's prior participation in "45-50" undercover drug buys when such testimony constituted extrinsic evidence which improperly bolstered the witness' credibility?

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- Opinion No. 02-4566; CR-01-627 from the United States Court of Appeals for the Fourth Circuit filed July 27, 2004

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Vander Moore Gore, Jr., asks this Court to issue a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit in this case wherein the government, on multiple occasions at trial, introduced evidence of pre-trial downward departures granted to testifying witnesses against the Petitioner.

OPINION BELOW

The United States Court of Appeals for the Fourth Circuit affirmed the Petitioner's convictions and sentence by unpublished opinion dated June 22, 2004. App-2. A timely petition for rehearing was filed and that petition was denied by the Court by order filed July 27, 2004. App-1.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on June 22, 2004. A timely petition for rehearing was denied on July 27, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1), which states in part, "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...."

The Court of Appeals had jurisdiction by application of 28 U.S.C. § 1291, Petitioner's case being a final judgment entered in a criminal case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fed. R. Evid. 608(a) states in part, "...[E]vidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Fed. R. Evid. 608(b) states in part, "... They [specific instances of conduct] may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

STATEMENT OF THE CASE

Petitioner was indicted in a superseding indictment filed November 5, 2001. Count I of the indictment alleged that from on or about January 1, 1981, and continuing thereafter up to and including the date of the superseding indictment, in the District of South Carolina and elsewhere, the defendants...

> Vander More Gore, Jr., . . . Anthony Pridgen, a/ka/ Big Ant, having two prior convictions for felony drug offenses that had become final, ... [and] Johnny Lee Gore, a/k/a Manager, having two prior convictions for felony drug offenses that had become final. . . did knowingly and willfully combine, conspire, confederate and agree and have tacit understanding with various other persons, both known and unknown to the Grand Jury, unlawfully to distribute and to

possess with intent to distribute 50 grams or more of cocaine base, commonly known as crack cocaine, a Schedule II controlled substance, 5 kilograms or more of cocaine, a Schedule II controlled substance, 50 kilograms or more of marijuana, a Schedule I controlled substance, and less than 100 grams of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

The case came on for trial before the Honorable Weston C. Houck, Judge, and a jury on May 28, 2002. After hearing testimony in the case the jury returned verdicts of guilty as charged as to Vander More Gore, Jr., and Anthony Pridgen, and convicted Johnny Lee Gore of conspiracy to possess and distribute 500 grams or more of cocaine. On December 18, 2002, Judge Houck sentenced Vander More Gore, Jr., to imprisonment for a term of life to be followed by a term of supervised release of five years. Fines were waived. On October 30-31, 2002, Judge Houck sentenced Johnny Lee Gore to a term of imprisonment of 360 months followed by 10 years of supervised released. Anthony Pridgen was sentenced to a term of imprisonment of two hundred and ninety two (292) months. Post trial motions were denied.

STATEMENT OF THE FACTS

Petitioner, Vander Moore Gore, Jr., is a senior citizen and a former city councilman for Atlantic Beach, South Carolina. Substantially all of the evidence against him came from witnesses who had been granted various sentencing concessions by the government in exchange for their testimony against the Petitioner.

Andrew Page was the Government's first witness. This witness testified specifically about Vander More Gore, Jr. (Vander More). For example, he testified that on occasion Jeffery, would tell Andrew to give the money to his father (Vander More) when he was not there. [Joint App from below at 93]. He did so 3-4 times in 1994-1995, usually around $1200 at a time. [Joint App from below at 94]. Vander More told him not to talk during drug transactions [Joint App from below at 93]. Vander More was around when Jeffery was dealing drugs. [Joint App from below at 93]. He saw a handshake wherein it appeared that Vander delivered cocaine to Jeffery in Andrew's apartment which he rented from Vander. [Joint App from below at 96-97-93]. On one occasion, he gave $2000.00 to Vander "for my package," [Joint App from below at 97-98] because Jeffery was out of town. [Joint App from below at 98].

The assistant U.S. Attorney asked the witness on direct examination whether he had entered into a plea agreement to which the witness responded affirmatively. [Joint App from below at 99, lines 24-25]. Thereafter, the witness testified that his understanding of the agreement was that he was to tell the truth. [Joint App from below at 100, lines 5.] At this time, the trial judge instructed the jury on the law relating to "downward departures." [Joint App from below at 102]. In this regard the District Court charged, inter alia

> [o]ne of the reasons we can depart downward is substantial assistance. That's what this witness has testified is in his plea agreement. If he provides substantial assistance to the government in the prosecution or investigation of a crime

> against someone other than himself, the government, if they deem his assistance substantial, has said that they will make a motion to depart downward. And if I, or whoever the sentencing judge is, determines he has indeed provided substantial assistance, I can grant that motion, and then . . . I can pretty much sentence him anywhere I want to below the guidelines.

[Joint App from below at 103, line 21-104, line 8].

The ninth witness called by the prosecution was Andy Kareem Keel. [Joint App from below at 142]. On one occasion he delivered $12,000.00 to Vander More. [Joint App from below at 148]. During her direct examination of this witness, the assistant U.S. Attorney asked if the witness had entered into a plea agreement and whether he was required to cooperate. The witness replied affirmatively and stated that he ***had already received a downward departure*** from the very judge presiding over Petitioner's case. [Joint App from below at 149, line 16-150, line 16].

The eleventh witness was Tommy Cooper. [Joint App from below at 155]. Occurring early in the direct examination was a discussion of the witness' plea agreement and the fact that he had ***already received a downward departure at his sentencing as a result of his cooperation with the government.*** [Joint App from below at 156, line 22-157, line 4]. The U.S. Attorney was able to elicit the impression from this witness that contrary to what was insinuated earlier, Vander More never attempted to run the drug dealers in this case (his co-conspirators) away from the beach. [Joint App from below at 163-164].

The fifteenth witness called by the government was Damian Lewis. [Joint App. from below at 178]. The assistant U.S. attorney asked the witness if he

had entered into a plea agreement and had *already received a downward departure as a result of his cooperation with the government.* [Joint App. from below at 179]. The witness responded affirmatively. Id. The eighteenth witness for the government was James T. Bellamy. [Joint App. from below at 198]. He got his drugs from "the Jamaicans." [Joint App. from below at 200]. The U.S. Attorney asked the witness initially about his plea agreement and whether he had agreed to cooperate with the government and to testify if called to do so. The witness stated "yes." [Joint App. from below at 199, lines 13-24].

The twentieth witness for the government was Clarissa Cooper Seales. [Joint App. from below at 200]. She also got her drugs from the Jamaicans. [Joint App. from below at 222]. This witness was asked on direct examination if she had a plea agreement and if she had agreed to cooperate truthfully. [Joint App. from below at 221, lines 3-6]. Her answer was yes. Likewise, the next witness, (the twenty-first), Courtney Michael Jennings, was asked about his plea agreement with the government on direct examination. [Joint App from below at 94, lines 17-19].

He testified he did have a plea agreement. He was one of the Jamaicans and he had already ***received a downward departure as a result of his cooperation with the government.*** [Joint App. from below at 224, lines 2-6]. He testified that he dealt two kilos a month when he was renting the Paradise Club from Vander More, and Vander would buy from him. [Joint App. from below at 226, lines 20-21].

Witness Clifton Lee Jordan was the twenty third witness called by the government. According to his testimony, Vander More advised him not to take the drugs off the street lest you would be caught for doing

so. [Joint App. from below at 229]. He sold small bags of marijuana to Vander More in 1999. [Joint App. from below at 235]. He went to trial and was convicted, but in calendar year 2000, he changed attorneys and started cooperating with the government. [Joint App. from below at 228]. Petitioner Vander More Gore bonded the witness out before his (Jordan's) trial. [Joint App. from below at 236, lines 6-19].

The government's twenty-sixth witness was Jermaine Davis. This witness was particularly harmful to Petitioner Vander More Gore, Jr., because of his testimony about an alleged extra-judicial threat which was made to him by this Petitioner against witness, Clifton Jordan. Allegedly, Vander More Gore, Jr., and his son Jeffrey told witness, Jermaine Davis, to tell Jordan to keep quiet or they would kill him. [Joint App. from below at 245].

Early in his direct examination, witness Davis was asked if he had a plea agreement and whether he had cooperated with the government. [Joint App. from below at 243-244]. He answered in the affirmative. Additionally, ***he testified that he had already received a downward departure for cooperating***. [Joint App. from below at 244, lines 1-15].

Witness Paul Bellamy was the sixteenth witness to testify on behalf of the government. He was an undercover informant for Horry County narcotics officers, David Avant and Victor Neil. He testified that he had previously worked on as many as twenty (20) occasions in controlled buys for Horry County and had been paid for doing so. [Joint App. from below at 181, lines 9-14].

Witness David Avant, the government's seventeenth witness, testified that Paul Bellamy had

been used on as many as forty-five to fifty (45-50) "undercover operations" resulting in arrests. [Joint App. from below at 182, lines 16-25]. Bellamy was permitted to testify about an alleged controlled buy of crack cocaine he made from Petitioner Vander More Gore, Jr., in 1988.[1]

During her closing arguments the assistant U.S. attorney spoke about the government's witnesses. She stated, "They are in an awkward position. They are in a plea agreement with the government, and under that plea agreement, they have to come in here and tell the truth." [Joint App. from below at 345, lines 23-25].

WHY THE PETITION SHOULD BE GRANTED

Both of the lower courts have decided important federal questions that have not been settled by this Court, and in a way that conflicts with a relevant decision of this Court, United States v. Abel, 469 U.S. 45 (1984).

Argument I

I. Did prosecution evidence of downward departures used in this case violate the F.R.E. 608 prohibition against bolstering credibility and if so, did it constitute plain error?

Sub issue: Did the District Court commit plain error when it allowed the Government's prosecuting attorney to initiate testimony about downward departures already granted to witnesses Keel, Cooper,

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[1] The tape was of very poor quality and difficult to understand. Moreover, the alleged crack cocaine purchased from Petitioner Vander Gore did not appear the way crack generally appeared. [Joint App. from below at 183, lines 9-13]. Compounding the problem is the fact that it has since allegedly been disposed of and was not available for trial.

Jennings, and Davis, all of whom who testified against Vander More Gore, Jr., when such testimony constituted extrinsic evidence which improperly bolstered the witnesses' credibility in violation of F.R.E 608?

The District Court allowed the Government's prosecuting attorney to initiate testimony about downward departures which had already been granted by the Court to witnesses Keel, Cooper, Jennings, and Davis, all of whom testified against Vander More Gore, Jr. We submit this testimony constituted extrinsic evidence which improperly bolstered the witnesses' credibility again in violation of F.R.E 608.

Fed. R. Evid. 608(b) prohibits the use of specific instances of conduct to bolster the credibility of a witness at trial.[2] With respect to witnesses Keel, Cooper, Jennings, and Davis, each witness had his respective and individual credibility bolstered with the use of specific instances of conduct, e.g. their cooperation with the government and *their downward departures received therefor*. This was done before any attack had been made on their credibility.[3]

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[2] Fed. R. Evid. 608(a) states in part, "...[E]vidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

[3] Fed. R. Evid. 608(b) states in part, "... They [specific instances of conduct] may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning

With respect to F.R.E. 608, evidence which is admissible for one purpose but inadmissible for another purpose, is not inadmissible per se. United States v. Abel, 469 U.S. 45 (1984). In the Abel, case, the government was allowed to introduce specific instances of extrinsic evidence to show bias, when the evidence would otherwise be prohibited by F.R.E. 608(b). However, this Court did not allow the government to bolster the credibility of its witnesses with the use of extrinsic evidence of previously granted downward departures when bias was not at issue. In this case, the extrinsic evidence, the evidence of downward departures, was prohibited by rule 608(b). Cf. United States v. Taylor, 900 F.2d 779 (4th Cir. 1990)(bolstering of witnesses credibility is prohibited by rule 608).

"Bolstering" is the practice of building up a witness's credibility before impeachment has been attempted. United States v. Lindemann, 85 F.3d 1232, 1242 (7th Cir.1996). The issue of improper bolstering is a mixed issue of law and fact that is reviewed de novo. United States v. Dring, 930 F.2d 687, 690 (9th Cir. 1991), *cert.denied,* ___ U.S. ___, 113 S.Ct. 110, 121 L.Ed.2d 68 (1992)." United States v. Santiago, 46 F.3d 885 (9th Cir. 1995).

Under the common law and Federal Rule of Evidence 608(a), cross-examination attacks on a witness's credibility and character will open the door to bolstering testimony and argumentation. United States v. Penny, 60 F.3d 1257 (7th Cir. 1995). However, in this case there was no prior cross examination, there was no attack on them in

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the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Petitioner's opening statement, and the government improperly bolstered the credibility of its witnesses on multiple occasions with the use of there court approved downward departures.

The error is compounded by the fact that the trial judge had already instructed the jury as to how a downward departure could be obtained. That instruction stated that such a departure required *the court* determine that the witness' credibility had already been positively assessed by both the prosecution and the Court. The District Court instructed the jury, "... if I, or whoever the sentencing judge is, determines he has indeed provided substantial assistance, I can grant that motion, and then . . . I can pretty much sentence him anywhere I want to below the guidelines." [Joint App. from below at 104].

We respectfully submit that in this case the trial judge indirectly albeit inadvertently vouched for the credibility of the government's witnesses who had already received downward departures. This was prejudicial, we submit, and it denied the Petitioner the right to a fair trial.

The witnesses provided testimony which directly implicated Vander Gore in the conspiracy and the Petitioner denied that he was involved in the illegal activities in any way. In the face of the downward departure testimony which had been approved by the Court, the Petitioner's denials would have seemed hollow to a fact finder. We submit that the rules of evidence are not intended to produce this result.

Plain Error

This error was not objected to at trial. However, appellate courts have discretion under Rule 52(b) to correct plain errors or defects affecting substantial

rights that were forfeited because objections were not timely raised in the district court. United States v. Olano, 507 U.S. 725 (1993).

In *Olano*, the Court discussed the limitations on appellate courts when considering the issue of correcting plain errors. The Court opined that there are three limitations on appellate authority under Rule 52(b).[4] We respectfully submit that the error complained of here is reviewable and correctable under *Olano, supra*.

ARGUMENT II

II. Did the District Court commit plain error when it allowed the Government to elicit testimony from witnesses Avant and Paul Bellamy concerning Bellamy's prior participation in "45-50" undercover drug buys when such testimony constituted extrinsic evidence which improperly bolstered the witness' credibility? (Issue II).

Witness Paul Bellamy was bolstered on two occasions with the use of extrinsic evidence by testifying about the "45-50" controlled buy arrests. United States v. Taylor, 900 F.2d 779 (4th Cir. 1990).

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[4] First, there must be an "error." A deviation from a legal rule during the district court proceedings is an error unless the defendant has waived the rule. Mere forfeiture does not extinguish an error. Second, the error must be "plain," a term synonymous with "clear" or, equivalently, "obvious." Third, the plain error must "affec[t] substantial rights," which normally means that the error must be prejudicial, affecting the outcome of the district court proceedings. Olano, 507 U.S. at 732-734.

Initially, improper bolstering occurred when witness Bellamy himself testified that he had participated in no less than twenty (20) undercover controlled buys for the Horry County narcotics officers. J App. 181, lines 9-14. The error was compounded when repeated when witness David Avant said the number of occasions had been more like "45-50" *and all had resulted in arrests*. J App. 182, lines 16-25.

We submit it was error for the district court to admit this extrinsic evidence that the informer, Bellamy, had provided reliable information and testimony that resulted in forty five to fifty (45-50) arrests, in order to bolster Bellamy's credibility with respect to his testimony against Vander Moore Gore, Jr.

As the Court discussed in *Taylor, supra*, Fed.R.Evid. 608(b) says that "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility . . . may not be proved by extrinsic evidence." *Taylor, supra, citing, United States v. Austin, 786 F.2d 986, 991-92 (10th Cir. 1986);* and *United States v. Napue, 834 F.2d 1311, 1324-25 (7th Cir. 1987)*. In Taylor, the Court went on to hold, "We agree with the Tenth and Seventh Circuits and hold that the admission of other convictions in cases in which [the informer] had testified was error." While the error complained of in this Court was not objected to in the District Court, Petitioner respectfully submits that the error is plain error which can be corrected in this Court.

First, the testimony violates Fed.R.Evid. 608(b) because it contains reference to extrinsic cases involving the witness which resulted in arrests. Secondly, we submit the error is plain because it presents a high number of alleged arrests made (45-

50) which were due to Bellamy's assistance, each arrest going to bolster the credibility of the witness with the use of specific instances of conduct.

Thirdly, the testimony undermines a substantial right of the Petitioner, Vander Moore Gore, Jr. That is, the testimony denied this Petitioner the right to a fair trial. The testimony was used to prove this Petitioner's alleged involvement in a drug conspiracy going back in time for many years when witness credibility was outcome determinative in this instance.

This witness testified that he had purchased crack cocaine from Petitioner Vander More Gore, Jr., in 1988. The jury heard an alleged audio tape of the incident. However, the audio tape was of poor quality. Petitioner denied that he was involved in the alleged conspiracy, and he further denied that he had sold witness Bellamy any crack cocaine either on the alleged occasion or otherwise. Moreover, Petitioner had not been prosecuted by state authorities for the alleged incident and the substance claimed by the government to be crack cocaine had long since been destroyed. Even witness Avant testified that the material he had seen did not appear to be like crack cocaine generally appeared to be. {Joint App. from below at 183, lines 9-13].

Thus, we submit that the error was plain and prejudicial to the right to a fair trial. *U.S. v. Taylor, supra.*

CONCLUSION

For the foregoing reasons, the requested writ should be granted to review the Fourth Circuit panel's treatment of the District Court's order. Upon so doing, this Court should reverse Petitioner's conviction and remand his case for a new trial on the

issue of guild of innocence.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
July 27, 2004

No. 02-4566
CR-01-627

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

VANDER MOORE GORE, JR.

Defendant - Appellant

ORDER

The appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

Entered for a panel comprised of Judge Duncan, Judge King, and Judge Shedd.

For the Court,
/s/ Patricia S. Connor

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee — No.02-4566

v.

Vander Moore Gore, Jr.,

Defendant-Appellant.

UNITED STATES OF AMERICA,

Plaintiff-Appellee — No.02-4908

v.

JOHNNY LEE GORE, AKA MANAGER,

Defendant-Appellant.

UNITED STATES OF AMERICA,

Plaintiff-Appellee — No.02-4084

v.

ANTHONY BYRON PRIDGEN, Aka Big Ant,

Defendant-Appellant.

Appeals from the United States District Court for the District of South Carolina, at Florence.

C. Weston Houck, Senior District Judge.
(CR-01-627)

Submitted: May 17, 2004

Decided: June 22, 2004

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Vander Moore Gore (Vander Gore), Johnny Lee Gore (Johnny Gore), and Anthony B. Pridgen appeal their convictions and sentences for conspiracy to possess with intent to distribute fifty grams or more of

cocaine base, five kilograms or more of cocaine, fifty kilograms or more of marijuana, and less than 100 grams of heroin in violation of 21 U.S.C. § 841(a)(1) (2000). We affirm.

Vander Gore argues an undercover informant's credibility was improperly bolstered when the district court permitted testimony that the informant had participated in numerous other drug buys. Because Vander Gore did not object to the admission of this evidence at trial, we review for plain error. *See United States v. Carr*, 303 F.3d 539, 543 (4th Cir. 2002) ("[A]n appellate court may correct an error not brought to the attention of the trial court if (1) there is an error (2) that is plain and (3) that affects substantial rights. If all three of these conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." (internal quotation marks and alteration omitted)), *cert. denied*, 537 U.S. 1138 (2003). In light of the overwhelming evidence against Vander Gore, we conclude the admission of this testimony did not seriously affect the fairness of his trial.

Vander Gore also argues that the testimony of several witnesses was bolstered when they were allowed to testify that they had received downward departures for their substantial assistance to the government. Because Vander Gore did not object to this testimony at trial, we also review this issue for plain error. *Carr*, 303 F.3d at 543.

The Government may introduce a witness's plea agreement during direct examination if: "(1) the prosecutor's questions do not imply that the government

has special knowledge of the witness's veracity; (2) the trial judge instructs the jury on the caution required in evaluating the witness's testimony; and (3) the prosecutor's closing argument contains no improper use of the witness's promise of truthful cooperation." *See United States v. Romer*, 148 F.3d 359, 369 (4th Cir. 1998) (citing *United States v. Henderson*, 717 F.2d 135, 138 (4th Cir. 1983)). Because we conclude the Government did not make improper use of this testimony and the district court gave a limiting instruction, we affirm Vander Gore's conviction and sentence.

Johnny Gore argues it was plain error for the government to inform the jury that three co-defendants had pled guilty and to mention the convictions of other family members. Evidence of a non-testifying codefendant's guilty plea should not be put before the jury. *United States v. Blevins*, 960 F.2d 1252, 1260 (4th Cir. 1992). The test for reversible prosecutorial misconduct generally has two components: that (1) the prosecutor's remarks or conduct must in fact have been improper and (2) such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the 3 UNITED STATES v. GORE defendant of a fair trial. *United States v. Mitchell*, 1 F.3d 235, 240 (4th Cir. 1993).

The factors to consider when evaluating the issue of prejudice to the defendant are (1) the degree to which the prosecutor's remarks have a tendency to mislead the jury; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; and (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters. *Id.* at 241.

The Government concedes its comments were improper. However, because Johnny Gore admitted he had been involved in the conspiracy and the crux of his case entered on whether he had adequately withdrawn from the conspiracy, we conclude the Government's statements were not so prejudicial that they deprived Johnny Gore of a fair trial.

Johnny Gore also argues the Government improperly vouched for and bolstered the credibility of several witnesses. Because Johnny Gore did not object to the Government's statements during trial, we review for plain error. *Carr*, 303 F.3d at 543.

A prosecutor may neither vouch for nor bolster the testimony of a witness in its arguments to the jury. *United States v. Sanchez*, 118 F.3d 192, 198 (4th Cir. 1997). Vouching occurs when the prosecutor indicates a personal belief in the credibility of a witness. A prosecutor may not make explicit personal assurances that a witness is trustworthy. *United States v. Lewis*, 10 F.3d 1086, 1089 (4th Cir. 1993). Bolstering is an implication by the Government that the testimony of a witness is corroborated by evidence that the Government knows, but that the jury does not know. *Id.*

If improper vouching or bolstering has occurred, we then consider (1) the degree to which the comments could have misled the jury; (2) whether the comments were isolated or extensive; (3) the strength of proof of guilt absent the inappropriate comments; and (4) whether the comments were deliberately made to divert the jury's attention. *Sanchez*, 118 F.3d at 198. However, because we conclude the Government did not commit

any improper vouching or bolstering, we affirm Johnny Gore's conviction and sentence.

Pridgen argues he was denied a fair trial because it was obvious to the jury that the district court was biased against him and his attorney. A judge's participation during trial should never reach the point that it appears clear to the jury that the judge believes the accused is guilty, or becomes so pervasive in his interruptions and interrogations that he may appear to usurp the role of either prosecutor or defense counsel. *United States v. Godwin*, 272 F.3d 659, 677 (4th Cir. 2001). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion . . . . [They] can only in the rarest circumstances evidence the degree of favoritism or antagonism required [to make fair judgment impossible] . . . when no extra-judicial source is involved." *Liteky v. United States*, 510 U.S. 540, 555 (1994) (citation omitted).

We conclude the district court's comments about which Pridgen complains are insufficient to show any deep-seated or unequivocal antagonism that rendered a fair judgment for Pridgen impossible. We therefore affirm Pridgen's conviction and sentence.

Accordingly, we affirm Vander Gore's, Johnny Gore's, and Pridgen's convictions and sentences. We also deny Johnny Gore's motion to file a pro se supplemental brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED